INTERSTATE COMMERCE — CONTROL BY STATES — STATE TAXATION OF TELEGRAPH COMPANIES EXERCISING FEDERAL PRIVILEGES. — A foreign telegraph company which had accepted the provisions of a federal statute authorizing the construction and operation of lines along post roads, etc., was subjected to a license tax on its intrastate business. A part of the business of the company was interstate and a part consisted of sending messages for the federal government as required by the statute. *Held*, that the tax is not unconstitutional. *Williams* v. *City of Talladega*, 51 So. 330 (Ala.).

A state cannot interfere with the exercise of federal powers. *M'Culloch* v. *The State of Maryland*, 4 Wheat. (U. S.) 316. But a telegraph company which, as in the principal case, has accepted the rights conferred by the federal statute may be taxed on account of property owned and used within the state. *Western Union Telegraph Co.* v. *The Attorney General of the Commonwealth of Massachusetts*, 125 U. S. 530. A tax on gross receipts derived from intrastate business is constitutional. *Ratterman* v. *Western Union Telegraph Co.*, 127 U. S. 411. And a municipal charge for the use of city streets is valid. *St. Louis* v. *Western Union Telegraph Co.*, 148 U. S. 92. But it has been held that the federal franchise of a railroad company is not taxable by the state. *California* v. *Central Pacific Railroad Co.*, 127 U. S. 1. Similarly, a tax upon the franchise of a telegraph company operating under a federal statute has been held unconstitutional. *City & County of San Francisco* v. *Western Union Telegraph Co.*, 96 Cal. 140; *Western Union Telegraph Co.* v. *Lakin*, 53 Wash. 326. But in a decision in which the railroad case was not referred to, the United States Supreme Court has upheld a municipal license tax on a telegraph company, as a valid exercise of the police power. *Postal Telegraph Cable Co.* v. *Charleston*, 153 U. S. 692. Although there is a shadowy distinction between a franchise tax and a license tax, the cases may be reconciled on the ground that the vital question is always whether the tax does in effect interfere with the national purpose. See *Railroad Co.* v. *Peniston*, 18 Wall. (U. S.) 5, 30. If the distinction does not seem justifiable, the decision in the principal case is to be preferred.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — CORRESPONDENCE SCHOOLS. — The plaintiff, a Pennsylvania corporation, contracted with the defendant in Kansas to instruct him by correspondence for a consideration. The plaintiff sued for breach of this contract in a Kansas court, which held that the plaintiff was debarred from suing, as it had not complied with certain regulations imposed by Kansas statutes. The decision was upheld in the Supreme Court of Kansas and this writ of error was then brought. *Held*, that the statutory regulations are void, as a burden on interstate commerce. *International Textbook Co.* v. *Pigg*, U. S. Sup. Ct., April 4, 1910.

The court places little reliance on the fact that the plaintiff's business involved the transportation of tangible articles of traffic such as books. It seems rather to be held that the importation of information from one state into another is, of itself, commerce. A state court has reached an opposite result in a case in which the same question was argued, the court being of the opinion that it was governed by the reasoning of those decisions in which the writing of insurance by a foreign corporation was held not to constitute interstate commerce. *International Textbook Co.* v. *Peterson*, 133 Wis. 302; *Paul* v. *Virginia*, 8 Wall. (U. S.) 168. The telegraph cases are cited as supporting the present decision. But the operation of the telegraph was brought under the commerce clause as being a necessary adjunct of commerce, and not on the ground that sending a telegram of itself was commerce. *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1. The principal case is additional proof that the insurance cases must be confined strictly to the points actually decided.

LANDLORD AND TENANT — CONDITIONS IN LEASE — EFFECT OF WAIVER. — A landlord, with notice of a subletting in breach of condition, received rent ac-

cruing thereafter. *Held*, that he will be restrained from entering for the breach in question, but that the condition is still in force as to subsequent breaches. *Beckenbach* v. *Harlow*, 31 Oh. C. C. 496. See NOTES, p. 630.

LIBEL AND SLANDER — PRIVILEGED COMMUNICATIONS — IRRELEVANT STATEMENTS IN PLEADINGS. — In a former action, the present defendant, in his pleadings, made false and defamatory statements concerning the present plaintiff. The latter had no connection with the suit, and the statements were irrelevant. *Held*, that the privilege is destroyed by the irrelevancy. *Potter* v. *Troy*, 175 Fed. 128 (Circ. Ct., S. D. N. Y.).

The prevailing view in the United States is that all statements made by the parties in their pleadings, if relevant to the matters in issue, are absolutely privileged. *Gaines* v. *Ætna Ins. Co.*, 20 Ky. L. Rep. 886. This is true even if they are directed against third parties not connected with the suit. *Crockett* v. *McLanahan*, 109 Tenn. 517. See 16 HARV. L. REV. 603. But if the statements are irrelevant, there is no privilege. *Harlow* v. *Carroll*, 6 App. Cas. (D. C.) 128. See *Hoar* v. *Wood*, 3 Met. (Mass.) 193. In determining what is relevant, the courts are not technical, and if the defendant might reasonably have believed that the allegations would be subject to inquiry during the trial, he is not liable. See *Union Mut. Life Ins. Co.* v. *Thomas*, 83 Fed. 803. On the other hand, the English courts have held that all statements made in the course of judicial proceedings are absolutely privileged, even if immaterial. *Astley* v. *Younge*, 2 Burr. 807; *Seaman* v. *Netherclift*, 1 C. P. D. 540. Parties must frequently allege facts which may be libelous, and England has adopted this rule to assure free access to the courts. See *Kennedy* v. *Hilliard*, 10 Ir. C. L. 195. But such a restriction as American courts have placed on malignant parties cannot hinder the administration of justice.

MANDAMUS — PERSONS SUBJECT TO MANDAMUS — SENATORS AND MEMBERS OF CONGRESS. — The plaintiff instituted proceedings for a mandamus against the several members of the United States Senate and House of Representatives comprising the Joint Committee on Printing of Congress, to compel the acceptance of a bid submitted by him. *Held*, that the court has jurisdiction to hear and determine the controversy. *Valley Paper Co.* v. *Smoot et al.*, 38 Wash. L. R. 170 (D. C., Sup. Ct., Feb. 28, 1910). See NOTES, p. 633.

MUNICIPAL CORPORATIONS — NUISANCES — CITY'S RIGHT TO MAINTAIN BILL IN EQUITY TO ENJOIN A NUISANCE. — A municipality was authorized by its charter to determine what constitute public nuisances and to prevent, restrain, remove, and abate the same. Without passing any ordinance relating to smoke nuisances, the city brought a bill in equity to enjoin the maintenance by the defendant of such a nuisance. No damage to municipal property was shown. *Held*, that the city cannot maintain the action. *City of Yonkers* v. *Federal Sugar Refining Co.*, 121 N. Y. Supp. 494 (Sup. Ct. App. Div.).

A municipal corporation like a private corporation may always bring a bill in equity to enjoin a nuisance which peculiarly affects the corporate property. *Coast Company* v. *Spring Lake*, 56 N. J. Eq. 615. The right to regulate and abate public nuisances is, however, dependent upon power delegated by the state. Whether a general delegation of police power to declare and abate nuisances carries with it a power to bring a bill in equity in the interest of the public is a question upon which the authorities are apparently in conflict. *City of Huron* v. *Bank of Volga*, 8 S. D. 449. *Contra*, *Dover* v. *The Portsmouth Bridge*, 17 N. H. 200, 215. But all the cases in which such bills have been refused seem to have concerned nuisances arising from sources outside the city's jurisdiction or respecting which no ordinance had been passed. *Township of Belleville* v. *Orange*, 70 N. J. Eq. 244; *City of Ottumwa* v. *Chinn*, 75 Ia. 405. And most of